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No. 09-131

IN THE

Supreme Court of the United States

RYAN PANNELL,

Petitioner,

—v.—

FRED BURNETTE, Warden, Telfair State Prison,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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July 27, 2009

QUESTIONS PRESENTED

1. Whether the state habeas court's holding that Petitioner forfeited his right to challenge the voluntariness of his guilty plea, because he failed to move to withdraw the plea after hearing his codefendant sentenced in a manner inconsistent with what Petitioner was advised could happen, fails to satisfy the requisites of the Due Process Clause under *Boykin v. Alabama*, 395 U.S. 238 (1969).

2. Whether an admitted failure to inform an accused of the minimum and maximum sentences he faces upon entering a non-negotiated guilty plea to multiple serious felonies establishes ineffective assistance of counsel.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	3
FACTUAL AND PROCEDURAL BACKGROUND	4
REASONS FOR GRANTING THE WRIT	9
I. This Court Should Grant Certiorari Because the State Habeas Court Contravened Federal Law When It Held That Petitioner Forfeited His Opportunity to Challenge the Voluntariness of His Guilty Plea When He Failed to Interrupt His Subsequent Sentencing Hearing and Move to Withdraw the Plea	9

PAGE

II. This Court Should Grant Certiorari Because the Habeas Court's Ruling that Petitioner Cannot Establish the Prejudice Element of His Ineffective Assistance of Counsel Claim Rests on the Unrealistic Premise that the Trial Court's Remarks at the Sentencing of His Co-Defendant "Cleared Up" Any Misadvice of Counsel 13

CONCLUSION 17

APPENDIX

Order of Supreme Court of Georgia denying discretionary appeal 1a

Order of Superior Court of Telfair County, Georgia, denying habeas corpus petition 2a

TABLE OF AUTHORITIES

Cases: PAGE

Baker v. Barbo, 177 F.3d 149 (3rd Cir.), *cert. denied*, 528 U.S. 911 (1999)..... 16

Bowers v. State, 599 S.E.2d 249 (Ga. App. 2004) 12

Boykin v. Alabama, 395 U.S. 238 (1969)..... 9, 10

Brady v. United States, 397 U.S. 742 (1970)..... 10

Brown v. State, 522 S.E.2d 230 (Ga. 1999) ... 12

Coleman v. Alabama, 827 F.2d 1469 (11th Cir. 1987)..... 10

Dalton v. Battaglia, 402 F.3d 729 (7th Cir. 2005) 10

Hill v. Lockhart, 474 U.S. 52 (1985) 15, 16

Jamison v. Klem, 544 F.3d 266 (3rd Cir. 2008)..... 11

Julian v. Bartley, 495 F.3d 487 (7th Cir. 2007) 15

Magana v. Hofbauer, 263 F.3d 542 (6th Cir. 2001) 16

Mask v. McGinnis, 28 F.Supp.2d 122 (S.D.N.Y. 1998), *aff'd*, 233 F.3d 132 (2d Cir. 2000), *cert. denied*, 534 U.S. 943 (2001) 16

McMann v. Richardson, 397 U.S. 759 (1970)..... 13

PAGE

Riggs v. Fairman, 399 F.3d 1179 (9th Cir. 2005) 15

Rios v. State, 637 S.E.2d 20 (Ga. 2006)..... 13

Strickland v. Washington, 466 U.S. 668 (1984) 14, 15, 16

Thompson v. State, 524 S.E.2d 239 (Ga. App. 1999) 12

United States v. Gordon, 156 F.3d 376 (2d Cir. 2001) 15, 17

United States v. Grammas, 376 F.3d 433 (5th Cir. 2004) 15

United States v. Nixon, 315 F. Supp.2d 876 (E.D. Mich. 2004) 16

Watson v. Anglin, 560 F.3d 687 (7th Cir. 2009) 15

Statutes:

28 U.S.C. § 1257(a) 1

O.C.G.A. § 16-8-41(b) (1999) 2, 4

O.C.G.A. § 16-11-106(b) (1999) 2, 4

PETITION FOR A WRIT OF CERTIORARI

Petitioner Ryan Pannell respectfully petitions for a writ of certiorari to review the order of the Supreme Court of Georgia denying discretionary review of the denial of his state habeas corpus petition.

OPINIONS BELOW

The order of the Supreme Court of Georgia (Appendix attached hereto ("App") 1a) and the order of the Superior Court of Telfair County, Georgia (App. 3a-22a) are unpublished.

STATEMENT OF JURISDICTION

This case involves the rejection below of federal claims of right presented to the state courts of Georgia in a petition for writ of habeas corpus. The order for which review is being sought was entered April 28, 2009 (App. 1a). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have com-

> pulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const., amend. XIV, section 1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Official Code of Georgia § 16-8-41(b) (1999) provides:

> A person convicted of the offense of armed robbery shall be punished by death or imprisonment for life or by imprisonment for not less than ten nor more than 20 years.

Official Code of Georgia § 16-11-106(b) (1999) provides in part:

> Any person who shall have on or within arm's reach of his person a firearm or a knife having a blade of three or more inches in length during the commission of, or the attempt to commit . . . [a]ny crime against or involving the person of another . . . and which crime is a felony, commits a felony and, upon conviction thereof, shall be punished by confinement for a period of five years, such sentence to run consecutively to any other sentence which the person has received.

STATEMENT OF THE CASE

Petitioner Ryan Pannell seeks review of state court orders denying him habeas relief despite a trial court's failure to ensure that his pleas of guilty to multiple felony offenses were entered intelligently. He is now serving the three consecutive life terms of imprisonment, plus thirty-five years, that were imposed for those convictions. Contrary to the rulings below, Petitioner's pleas were tendered as a result of ineffective assistance of counsel and accepted in violation of his due process rights, in the wake of incorrect, incomplete, and contradictory statements from both court and counsel about the range of sentences he faced. The Georgia courts' treatment of his federal contentions on habeas review betrays confusion about the applicable legal standards, which this Court would do well to clarify.

FACTUAL AND PROCEDURAL BACKGROUND

On May 4, 2000, Petitioner appeared with counsel before the Superior Court of Dade County, Georgia, and pleaded guilty to eight counts of a thirty-five count indictment. Convictions were entered on three counts of armed robbery, three counts of unlawful possession of a firearm during the commission of a crime, and one count each of burglary and forgery in the first degree. All the charges arose from an October 12, 1999 incident involving Petitioner and his brother Ron L. Pannell, in which none of the victims was physically injured.[1] Petitioner's

[1] Ron L. Pannell was indicted separately but pleaded guilty and was sentenced along with Petitioner. His state habeas petition was also denied, and the Supreme Court of Georgia

plea was a "blind plea" as to sentencing; the only promise from the State was that it would seek orders of *nolle prosequi* as to the remaining twenty-seven counts of the indictment.

Prior to his guilty plea, Petitioner received from his attorney markedly erroneous information about both the minimum and maximum sentences permitted under Georgia law for the offenses at issue. A standardized plea form completed by counsel and discussed with Petitioner contained several material inaccuracies. Counsel failed to indicate the aggregate minimum and maximum sentences that Petitioner faced if found guilty on every count of the indictment, or on the eight counts to which he was pleading guilty. In the blank on the form that follows the question, "Do you understand that the minimum sentence is," counsel filled in seven, not eight, numbers: "10, 10, 1, 1, 1, 1, 1." Actually the minimum sentence for the eight counts was fifteen years because the armed robbery counts carried a statutory minimum of ten years' imprisonment, O.C.G.A. § 16-8-41(b) (1999), and the five-year term for unlawful possession of a firearm was required to be served consecutively. O.C.G.A. § 16-11-106(b) (1999). In similar fashion, in the blank on the plea form that followed the question, "Do you understand that the maximum sentence is," counsel wrote in "Life, 20, 20, 20, 10, 5, 5," even though the statutory maximum for the three armed robbery counts was life imprisonment, and even though the life sentences could be imposed consecutively.

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denied discretionary review of his case. Petitioner and his brother have different Warden/Respondents in their habeas actions because they are confined in different prisons. Ron L. Pannell's Petition for a Writ of Certiorari, which poses questions substantially related to those in the instant Petition, has been docketed in this Court as No. 09-43.

At the plea hearing, the court made no effort to engage Petitioner individually about the range of sentences he faced. Instead, it simply asked Petitioner if he had been listening during the court's rushed and confused plea colloquy with Petitioner's brother and co-defendant. During that earlier exchange, the court did indicate that armed robbery carried a minimum sentence of ten years' incarceration and a maximum of life. But it also omitted mention of the burglary count to which both brothers were pleading guilty; referred instead to kidnapping and aggravated assault counts to which they were not pleading guilty; misrepresented the five-year term that was required by statute to be imposed for the firearms counts as a one to five-year range; and erroneously indicated that it had the option of running all of his sentences—including those on the firearms counts—concurrently with his other sentences. After accepting the guilty plea from Petitioner's brother following that exchange, the court simply asked Petitioner, "Is that the way you understand it?" Accepting the guilty plea as knowing and voluntary, the court relied on Petitioner's statement that he had gone over the plea form with counsel and that he understood it, but it never reviewed with either co-defendant the contents of their forms,[2] nor did it address or apparently know about the mismatch between counsel's advice to Petitioner and what it had just told him. Petitioner would later testify that if he had known the true gravity of the range of punishment he faced, he would definitely not have pleaded guilty (App. 13a.)

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[2] The plea form relied presented to Petitioner's brother contained different erroneous calculations concerning the statutory minimum and maximum sentences on the counts to which they were pleading guilty.

At a hearing seven weeks later, the court first sentenced Petitioner's brother, imposing three consecutive life terms of imprisonment on the armed robbery counts and consecutive, maximum terms for burglary (twenty years) and each of the three firearm counts (five years each).[3] As it did so, the court sought and received from the prosecutor a clarification that the firearm counts required consecutive five year terms. But without any delay in the proceedings and without asking whether this clarification affected Petitioner's understanding, the court imposed identical sentences on him.

Through new counsel, Petitioner timely filed a habeas corpus petition in the state Superior Court for his county of confinement. One of the claims in his petition was that his guilty pleas had not been entered knowingly, voluntarily, and intelligently, and that his convictions had thus been obtained in violation of the Due Process Clauses of the United States and Georgia Constitutions. Petitioner also asserted that the attorney who represented him at his plea and sentencing had rendered ineffective assistance of counsel, (Petition for Writ of Habeas Corpus, Attachment at 1, 2).

Petitioner testified at an evidentiary hearing before the habeas court and the testimony of his counsel was taken during a deposition that was subsequently entered into the record below. Petitioner stated that his counsel had handed him the plea form as they waited in the courtroom only moments before he entered his guilty plea and had not discussed with him at all the contents of the form,

[3] The court sentenced Petitioner's brother, and would sentence Petitioner, to the maximum term of years for forgery as well, but it allowed that ten-year term to be served on probation.

including the confusing and erroneous information concerning the minimum and maximum sentences he was facing. Petitioner affirmed that at no point did his counsel or the court inform him of the aggregate minimum and maximum sentences he faced on the counts to which he was pleading guilty, and that he "didn't have a clue" that the statute required the sentence on the firearms violations to be imposed consecutively.

Petitioner's prior counsel recalled that the District Attorney had refused to negotiate a sentence recommendation, insisting instead on a "blind plea." Counsel acknowledged that he had filled in the blanks on the form where the minimum and maximum possible sentences belonged, but he couldn't remember whether he had explained the parameters of the possible sentences to Petitioner, either in terms of years or of consecutive sentencing requirements. One of the few matters on which he seemed certain was that he did not advise Petitioner that he was facing a fifteen-year minimum term.

The habeas court denied relief in an unpublished order (App. 2a-22a). It found that the plea form incorrectly reflected that the firearms counts carried a sentence of one to five years, and that the court repeated this error at Petitioner's plea hearing (App. 10a-11a). But it concluded that this error was corrected later, in the course of his brother's sentencing, and found that Petitioner did not then raise any objection. The court correctly noted that in Georgia, a defendant has a right to withdraw his guilty plea only until sentence is pronounced, and it held Petitioner accountable for failing to stop the proceedings and report his confusion during the extremely brief interval between his brother's sentencing and his own (App. 12a-13a). The habeas

court rejected Petitioner's attack on the voluntariness of his plea by reference to this supposed default:

> Petitioner, despite foregoing the opportunity to ask to withdraw his guilty plea when he had an unfettered right to do so, now puts forth the position that he had no idea about the mandatory sentencing provisions of possession of a firearm during the commission of a crime and would not have pled guilty had he been aware. Petitioner's failure to seek a withdrawal of his guilty plea thus precludes him from advancing this argument at this stage (App. 11a-12a).

The court's finding that any inaccurate statements about possible penalties had been "cleared up" during Petitioner's brother's sentencing also led the court to hold that Petitioner could not satisfy the prejudice prong of his ineffective assistance of counsel claim (App. 17a, 20a-21a).

Petitioner's timely application for discretionary review of the habeas court's order raised two claims of error: that "Petitioner's guilty plea was not knowingly, intelligently and voluntarily entered," and that "the trial attorney for petitioner provided ineffective assistance of counsel." (Application for Certificate of Probable Cause, III). The Supreme Court of Georgia declined discretionary review in a brief order (App. 1a).

REASONS FOR GRANTING THE WRIT

I. This Court Should Grant Certiorari Because the State Habeas Court Contravened Federal Law When It Held That Petitioner Forfeited His Opportunity to Challenge the Voluntariness of His Guilty Plea When He Failed to Interrupt His Subsequent Sentencing Hearing and Move to Withdraw the Plea

This Court's seminal decision on the requisites for a valid guilty plea places the responsibility for ensuring that the plea has been entered voluntarily and intelligently squarely on the shoulders of the presiding judge:

> What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought.

Boykin v. Alabama, 395 U.S. 238, 243-244 (1969). Nevertheless, despite conceding that Petitioner was misinformed about the sentence he might receive until his brother's sentencing had been accomplished and his own sentencing was imminent, the habeas court cut off inquiry into the validity of his plea because of his failure instantaneously to cry foul and seek to withdraw his plea in the middle of the sentencing hearing. In doing so, the habeas court excused the performance of a basic judicial duty by erecting a backward-looking bar to vindication of rights that had accrued weeks before the sentencing occurred. It placed great weight on the few moments

between the sentencing of Petitioner's brother and the fixing of his own penalty; but whether that interval were brief or extended, the habeas court's holding, essentially that Petitioner forfeited his right to insist on a showing of voluntariness, cannot be squared with the requirements of due process.

Echoing *Boykin*, this Court has described a voluntary guilty plea as being "entered by one fully aware of the direct consequences." *Brady v. United States*, 397 U.S. 742, 755 (1970). Among the "direct consequences" of a guilty plea, "[o]ne of the most lasting effects . . . is the type and term of sentence [an accused] may receive and the lasting effects of that sentence." *Coleman v. Alabama*, 827 F.2d 1469, 1473 (11th Cir. 1987) (granting habeas relief against conviction by plea due to failure to inform defendant of option to be sentenced under Youthful Offender statute). To ensure a guilty plea is entered "intelligently" in this context, "*Boykin* stands for the proposition that a defendant is constitutionally entitled to have information concerning the range of punishment prescribed by the act to which he may be sentenced. . . ." *Id.* The *Boykin* decision itself listed the "permissible range of sentences" as among the types of information defendants should be provided before pleading. 395 U.S. at 244 n. 7.

The "permissible range of sentences," of course, includes the maximum and minimum punishments the defendant faces on the counts to which he is pleading guilty. *See Dalton v. Battaglia*, 402 F.3d 729, 733 (7th Cir. 2005) (remanding for factfinding but stating that failure to inform habeas petitioner of maximum sentence exposure would violate *Brady*) ("We can imagine no consequence of a defendant's guilty plea more direct, immediate, and automatic than the maximum amount of time she

may serve as a result of her plea") (citation omitted). In addition, "[i]t is at least as important for the accused to be accurately informed of the minimum incarceration that he/she will have to serve pursuant to a guilty plea." *Jamison v. Klem*, 544 F.3d 266, 277 (3rd Cir. 2008) (holding it was unreasonable application of existing federal law to have failed to inform habeas petitioner he was subject to mandatory minimum sentence). Given that the sentences handed down by most courts range closer to the minimum than the maximum allowed under statute, the mandatory minimum "may be far more relevant than the theoretical maximum because that is rarely imposed." *Id.*

In the instant case, Petitioner was not only deprived of information concerning the aggregate minimum and maximum sentence he faced, he was serially misinformed by counsel and the court about the sentencing range on a number of the counts to which he was pleading guilty. The seven numbers filled in by counsel in the form's blanks for minimum and maximum sentence did not reflect the minimum sentence for the eight counts on which he would be convicted. In addition, Petitioner would testify that he "did not have a clue" that the firearm violations were required by statute to be served consecutively; to the contrary, the court misinformed Petitioner at his plea hearing that all the sentences could be either concurrent or consecutive. This misinformation was compounded by the court's failure to conduct any meaningful colloquy with Petitioner concerning his individual plea, instead merely asking whether he had been listening to the rushed and confused exchange the court had earlier with Petitioner's brother and co-defendant. In that earlier exchange, moreover, the court suggested it was

merely repeating the information from the plea forms, when in fact it was contradicting it.

It bears emphasis that the deficits in Petitioner's plea proceeding were more than failures to recite formulas or to comply with the niceties of court rules. There is Georgia authority for the proposition that it doesn't matter who provides a defendant with the necessary advisals about his rights and about plea consequences, as long as he has the information. *See, e.g., Bowers v. State*, 599 S.E.2d 249, 251 (Ga. App. 2004) (excusing failure to inform a defendant that he faced mandatory minimum sentence, where written plea agreement so advised him); *Thompson v. State*, 524 S.E.2d 239, 240-41 (Ga. App. 1999) (trial court's failure to recite maximum possible sentence did not vitiate voluntariness of plea where record showed that counsel had explained maximum to defendant). But here the form that could have filled in the gaps in Petitioner's knowledge, the form on which the trial court so heavily relied, was itself full of errors. And if Petitioner was sunk in confusion, the trial court's remarks during the plea colloquy only dug him in deeper. *Cf. Brown v. State*, 522 S.E.2d 230 (Ga. 1999) (sustaining plea where extensive colloquy settled conflicts between plea agreement and court's plea form, with respect to sentence exposure).

With the form Petitioner signed and the attorney he was furnished both failing to serve their intended functions, responsibility for ensuring voluntariness lay with the judge presiding; yet the habeas court ruled that "Petitioner's failure to seek a withdrawal of his guilty plea . . . precludes him from advancing [an involuntariness] argument at this stage" (App. 11a-12a). Due process required more than the for-

tuity that Petitioner recognize, weeks after pleading guilty and in the middle of a hurried sentencing, that he had been misled and venture to interrupt an unfamiliar proceeding with a protest. It was for the court to ensure, during the taking of Petitioner's guilty plea, that Petitioner, individually, was waiving his rights with full knowledge of what could ensue. Only then could a reviewing court properly determine whether "the plea [was] a voluntary and intelligent act of the defendant," *McMann v. Richardson*, 397 U.S. 759, 772 (1970), as required by the Due Process Clause.

II. This Court Should Grant Certiorari Because the Habeas Court's Ruling that Petitioner Cannot Establish the Prejudice Element of His Ineffective Assistance of Counsel Claim Rests on the Unrealistic Premise that the Trial Court's Remarks at the Sentencing of His Co-Defendant "Cleared Up" Any Misadvice of Counsel

The habeas court dismissed Petitioner's claim that the erroneous advice he received about sentence exposure deprived him of his right to the effective assistance of counsel by imposing on him an obligation to call a halt to the proceedings in the fleeting moments between his brother's sentencing and his own. In doing so, the court below further extended jurisprudence in Georgia that already minimizes the impact of attorney errors of this sort on the voluntariness of guilty pleas. In the case relied upon by the habeas court (App. 18a), *Rios v. State*, 637 S.E.2d 20 (Ga. 2006), an error by counsel concerning parole eligibility was actually corrected much earlier, at the plea hearing itself, before the defendant entered his guilty plea. *Id.* at 22-23. By

contrast, in the instant matter, the habeas court acknowledged that Petitioner did not learn the correct minimum and maximum for the firearm violations, as well as the statutory mandate that they be served consecutively, until weeks after the plea was entered and only moments before sentence was imposed, upon which his right to plea withdrawal "disappeared" (App. 12a). Yet it unfairly charged Petitioner with the burden of attempting to withdraw the plea during this narrow window, a burden made exceedingly difficult to carry because of the lack of awareness or diligence by counsel on the very topic of sentencing exposure. The manner in which the habeas court minimized the impact of these attorney errors runs counter to the sweep of federal and state precedents, but it is representative of how Georgia courts typically settle for less than constitutionally adequate advice when evaluating guilty plea proceedings against Sixth Amendment standards.

To succeed on a claim of ineffective assistance of counsel, Petitioner must show both that his counsel's performance was constitutionally deficient such that he was not functioning as the "counsel" guaranteed by the Sixth Amendment, and that Petitioner was prejudiced by his counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In order to establish deficient performance, Petitioner must show that his counsel performed below an objective standard of reasonableness under prevailing professional norms. *Id.* at 687-88. Also required is a showing of prejudice, meaning that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A "reasonable probability" is a "probability sufficient

to undermine confidence in the outcome." *Id.* In the context of a guilty plea, the prejudice inquiry "focuses on whether the counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Numerous federal courts have emphasized the importance, for constitutional purposes, of accurate advice about the sentencing range an accused faces when deciding whether to seek or accept a plea bargain. Demonstrable misadvice of counsel with respect to minimum and maximum potential sentences generally satisfies the deficient performance prong of *Strickland*. *See, e.g., Watson v. Anglin*, 560 F.3d 687, 691 (7th Cir. 2009) (finding it "objectively unreasonable for counsel to underestimate the possible sentence his client was facing," where defendant told maximum sentence was 60 years when in fact it was 120 years); *Julian v. Bartley*, 495 F.3d 487 (7th Cir. 2007) (granting relief where defense counsel's misinterpretation of *Apprendi* rule caused him to underestimate petitioner's potential sentence); *Riggs v. Fairman*, 399 F.3d 1179, 1183 (9th Cir. 2005) (habeas relief warranted where counsel advised defendant that sentence exposure was nine years and defendant actually faced 25-year-to-life term as career offender); *United States v. Grammas*, 376 F.3d 433, 437 (5th Cir. 2004) (counsel's performance "was deficient because, among other things, [he] was unfamiliar with the Sentencing Guidelines and substantially misstated [client's] exposure"); *United States v. Gordon*, 156 F.3d 376, 380 (2d Cir. 2001) ("By grossly underestimating [his client's] sentencing exposure in a letter to his client, [counsel] breached his duty as a defense lawyer in a criminal case to advise his client fully on whether a

particular plea to a charge appears desirable"); *Magana v. Hofbauer*, 263 F.3d 542, 550 (6th Cir. 2001) (granting habeas relief for ineffective assistance where counsel misadvised petitioner that sentence under plea agreement would run concurrently, not consecutively); *Baker v. Barbo*, 177 F.3d 149, 154 (3rd Cir.) (holding "attorney's error with respect to his ignorance of the sentencing law has satisfied the first prong of the *Strickland* test"), *cert. denied*, 528 U.S. 911 (1999); *United States v. Nixon*, 315 F. Supp.2d 876, 878 (E.D. Mich. 2004) (misstating mandatory minimum sentence by five years and failing to advise of risk of receiving life sentence constituted ineffective assistance); *Mask v. McGinnis*, 28 F.Supp.2d 122, 125 (S.D.N.Y. 1998) (granting habeas relief where counsel failed to recognize that prosecution had overstated defendant's recidivist status, which affected applicable sentencing range and, thereby, plea negotiations), *aff'd*, 233 F.3d 132 (2d Cir. 2000), *cert. denied*, 534 U.S. 943 (2001).

Indeed, the habeas court in this case never rejected the argument that counsel's performance had been deficient, but instead based its rejection of Petitioner's Sixth Amendment claim on his purported failure to establish prejudice (App. 17a-18a). But the record in this case just as easily satisfies the second prong of the *Strickland* test. There can be little doubt "whether the counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill*, 474 U.S. at 59. Although the habeas court discounted it (App. 13a), Petitioner testified unequivocally that he would not have pleaded guilty had he received accurate advice about his sentencing exposure. According to counsel's testimony, the sole choice available to Petitioner was to enter a "blind plea" or to proceed to

trial. Still, counsel's advice was deficient and harmful; Petitioner "was nonetheless prejudiced because he did not have accurate information upon which to make his decision to pursue further plea negotiations or go to trial." *Gordon*, 156 F.3d at 380.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 27, 2009

APPENDIX

SUPREME COURT OF GEORGIA

Case No. S09H0748
Atlanta, April 28, 2009

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

RYAN W. PANNELL v. FREDERICK BURNETTE, WARDEN

From the Superior Court of Telfair County.

Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

06CV027

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Jeanette Eidson, Deputy Clerk.

[Seal]

IN THE SUPERIOR COURT OF TELFAIR COUNTY
STATE OF GEORGIA

CIVIL ACTION NO: 06-CV-027

RYAN W. PANNELL,
GDC-1059412,

Petitioner,

—vs.—

FRED BURNETTE, WARDEN,

Respondent.

FINAL ORDER

Petitioner, RYAN W. PANNELL, filed this petition for Writ of Habeas Corpus challenging the validity of his May 4, 2000, guilty plea convictions in the Superior Court of Dade County for three (3) counts of armed robbery, one (1) count of burglary, one (1) count of forgery in the first degree, and three (3) counts of possession of a firearm during the commission of a crime. Based upon the record as established at the June 30, 2006, and August 4, 2008, evidentiary hearings, this Court denies relief based upon the following findings of fact and conclusions of law.

PROCEDURAL HISTORY

Petitioner was indicted by the Dade County Grand Jury on or about April 10, 2000, for three (3) counts of armed robbery, four (4) counts of kidnapping, eight (8) counts of aggravated assault, two (2) counts of burglary, one (1) count of forgery in the first degree, one (1) count of unlawful possession of a firearm, two (2) counts of possession of a sawed-off shotgun during the commission of a crime, and fourteen (14) counts of possession of a firearm during the commission of a crime. (Habeas Hearing Transcript June 30, 2006, p. 45). On May 4, 2000, Petitioner pled guilty to three (3) counts of armed robbery, one (1) count of burglary, one (1) count of forgery in the first degree, and three (3) counts of possession of a firearm during the commission of a crime. (Habeas Hearing Transcript June 30, 2006, pp. 81-88). An Order of Nolle Prosequi was entered on the remaining charges. (Habeas Hearing Transcript June 30, 2006, p. 89). On June 22, 2000, Petitioner was sentenced to life imprisonment on each of the three (3) counts of armed robbery to run consecutive to each other, twenty (20) years imprisonment on the burglary charge to run consecutive to the sentences for armed robbery, five (5) years on each of the convictions for possession of a firearm during the commission of a crime to run consecutive to the sentence for burglary and consecutive to each other, and ten (10) years probation on the charge of forgery in the first degree to run consecutive to the other sentences. (Habeas Hearing Transcript June 30, 2006, pp. 81-88). As part of the sentence for forgery in the first degree, Petitioner was also banished from the counties of Dade, Walker, Catoosa,

and Chattooga. (Habeas Hearing Transcript June 30, 2006, p. 85).

Petitioner filed an Application for Sentence Review on June 27, 2000. (Habeas Hearing Transcript June 30, 2006, p. 115). Petitioner's sentence was affirmed by the Sentence Review Panel of Georgia on July 13, 2001. (Habeas Hearing Transcript June 30, 2006, p. 114).

Petitioner filed the instant petition by and through counsel on January 12, 2006. At the evidentiary hearing on June 30, 2006, Petitioner testified on his own behalf and was subjected to cross-examination. Petitioner's former trial counsel testified through a deposition taken on July 30, 2008; a certified copy of the transcript of this deposition was admitted into evidence at the evidentiary hearing on August 4, 2008. (Habeas Hearing Transcript August 4, 2008, pp. 4-69).

GROUND ONE

In Ground One, Petitioner alleges that the trial court violated Uniform Superior Court Rule 33.8 in accepting the plea of guilty by Petitioner for each of the counts for which he was sentenced, that the trial court failed to inform Petitioner on the record of the rights he was waiving by pleading guilty, and that there were violations of the Constitution of the State of Georgia and the Constitution of the United States of America by the trial court accepting the plea of guilty by Petitioner on each of the counts for which he was sentenced.

Findings of Fact

The transcript of the May 4, 2000, plea hearing reflects that the trial court asked Petitioner if he had signed his guilty plea form; Petitioner responded that he had. (Habeas Hearing Transcript June 30, 2006, p. 16). The trial court then asked Petitioner if he and trial counsel had gone over the form, Petitioner responded that they had. (Habeas Hearing Transcript June 30, 2006, p. 16). The trial court then asked Petitioner if he understood the form; Petitioner responded that he did. (Habeas Hearing Transcript June 30, 2006, p. 16). The trial court then asked Petitioner if he had any questions about it; Petitioner responded that he did not. (Habeas Hearing Transcript June 30, 2006, p. 16). The trial court then asked Petitioner if he had supplied to trial counsel the answers to each of the questions on the plea form; Petitioner replied that he had. (Habeas Hearing Transcript June 30, 2006, p. 16).

The plea form to which the trial court referred at the May 4, 2000, hearing includes an entry that advises the defendant completing the form that, should be plead not guilty, he would have, *inter alia*, the right to a trial by jury, the right to confront witnesses, and the right against self-incrimination. (Habeas Hearing Transcript June 30, 2006, p. 108). The form then asks the defendant if he understands these rights; Petitioner replied "yes" to this question on the plea form he completed. (Habeas Hearing Transcript June 30, 2006, p. 108); The form also asks the defendant if he wants more time to talk with his attorney; Petitioner replied that he did not. (Habeas Hearing Transcript June 30, 2006, p.108). The form asks the defendant if anyone has threatened or

coerced him into pleading guilty; Petitioner answered "no" to this question. (Habeas Hearing Transcript June 30, 2006, p. 108). Finally, the form tells the defendant that if he pleads guilty, he will give up all the constitutional rights just outlined to him and asks if he understands this; Petitioner answered that he did. (Court Exhibit 1 to Deposition of Charles Gammons Wright, Jr., July 30, 2008).[1]

Conclusions of Law

The Court notes, first, that alleged violations of Uniform Superior Court Rule 33.8 for accepting guilty pleas do not state bases for relief in habeas corpus, as the Uniform Superior Court Rules are not of constitutional dimension, and O.C.G.A. § 9-14-42(a) is limited to review of a violation of a federal or state constitutional right. *Britt v. Smith*, 274 Ga. 611 (2001).

That being said, this Court finds that this claim does not provide a basis for relief. Uniform Superior Court Rule 33.8 provides a list of things that a trial court should determine before accepting a plea of guilty or nolo contendere from a defendant, including a list of rights the defendant is waiving by entering a plea.[2] While the requirements of Uniform

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[1] Counsel for Petitioner and counsel for Respondent agreed by stipulation at the deposition of Charles Gammons Wright, Jr., Petitioner's former trial counsel, that a certified copy of the plea form would be attached as an exhibit to the deposition and considered as an evidentiary submission in this case. (Habeas Hearing Transcript August 4, 2008, pp. 6-7).

[2] All of these rights are included in the plea form signed by Petitioner. Uniform Superior Court Rule 33.8; Habeas Hearing Transcript June 30, 2006, p. 108.

Superior; Court Rule 33 are mandatory, a trial court is not required to specifically address each issue found in Uniform Superior Court Rule 33.8. *Raley v. State*, 241 Ga. App. 713, 714 (2000), citing *McClendon v. State*, 256 Ga. 480, 481 (2) (1986) and *Johns v. State*, 223 Ga. App. 553 (1) (1996). Instead, the State must show that the record as a whole shows that the defendant's plea was knowing and voluntary. *Raley* at 714, citing *King v. State*, 215 Ga. App. 139, 140 (1) (1994). This burden can be met either by "(1) showing on the record of the guilty plea hearing that the defendant realized all the rights he was waiving and the possible consequences of his plea, or (2) using extrinsic evidence that shows that the guilty plea was knowing and voluntary." *Id.*

For a guilty plea to be valid, it must be intelligently and voluntarily entered. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *Parke v. Raley*, 506 U.S. 20, 28 (1992). This is because a guilty plea constitutes a waiver of three constitutional rights: the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Parke* at 29. A waiver of these rights cannot be presumed from a silent record; the record as a whole, including extrinsic evidence, must show that the defendant knowingly and intelligently waived these rights. *Foskey v. Battle*, 277 Ga. 480 (2004), The respondent has the burden to establish that a guilty plea was knowingly, voluntarily, and intelligently made. *Byrd v. Shaffer*, 271 Ga. 691 (1999).

The case of *State v. Cooper*[3] is applicable to the instant case. In *Cooper*, the habeas court ruled that Cooper did not make a knowing and voluntary waiver of his *Boykin* rights based on its finding that

[3] 281 Ga. 63 (2006).

the "plea transcript . . . reveals that the trial court did not inform [Cooper] of any of the rights being waived by pleading guilty. . . . The transcript does provide that the court inquired as to whether [Cooper] had read and understood the plea petition, whether the answers were truthful and made under oath, and whether [Cooper] was satisfied with his attorney. [The State] provided no extrinsic evidence in an effort to meet its burden in this regard," *Cooper* at 64. The Supreme Court of Georgia stated that "it is clear that the habeas court considered the sole determinative factor to be the failure of the trial court to inform Cooper expressly of the constitutional rights that he would be waiving by entering the guilty pleas." *Id.* at 65. The Supreme Court stated that, while the "better practice is to discuss every essential right a defendant is waiving, on the record with that defendant,"[4] the decisive question is not whether the trial court followed this "better practice" but whether the record, as a whole, affirmatively shows that the plea was entered knowingly and voluntarily. *Cooper* at 65. The Supreme Court stated that the record as a whole in *Cooper* included things that the habeas court did not consider as probative, including the plea form executed by Cooper and the trial court's inquiries regarding Cooper's understanding of the plea form. *Id.*

The plea form at issue in *Cooper* included, with regard to the *Boykin* rights, questions asking Cooper to check yes or no with regard to whether or not he understood that, if he pled not guilty, he would have those rights. *Id.* Cooper had checked "yes" with regard to two of the three *Boykin* rights and failed to answer with regard to the third one.

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[4] *Id.*, quoting *Moore v. State*, 225 Ga. App. 860 (1).

However, Cooper had checked "yes" to the question as to whether he understood that he was waiving the rights mentioned in the series of questions that included all three *Boykin* rights. *Id.* at 66. The plea form also asked Cooper if he was pleading guilty voluntarily and of his own free will and accord; Cooper checked "yes" to this question as well. *Id.*

The Supreme Court of Georgia then turned to an examination of the transcript of the plea hearing. At the plea hearing, the trial court asked Cooper whether he had read the plea petition, understood the questions, and answered truthfully. *Id.* Cooper responded that he had to all of these inquiries. *Id.* The Supreme Court of Georgia found that this was a reaffirmation in open court by Cooper that he understood that, by pleading guilty, he would be waiving his constitutional rights. *Id.* The Supreme Court ruled that "the evidence demanded a finding that Cooper's guilty pleas were freely and voluntarily entered, and the habeas court erred in granting relief." *Id.* at 67.

In the instant case, the plea form completed by Petitioner, like the one in *Cooper*, requested a response from Petitioner as to whether or not he understood that he would be entitled to the *Boykin* rights should he plead not guilty. Petitioner answered that he did so understand on the plea form. Petitioner also stated on the plea form that no one had threatened or coerced him into pleading guilty. The form also told Petitioner that if he pled guilty, he would give up all the constitutional rights just outlined to him and asked if he understood this; Petitioner answered that he did. As noted above, during the plea hearing, the trial court asked Petitioner if he had signed his guilty plea form and Peti-

tioner responded that he had; the trial court asked Petitioner if he and trial counsel had gone over the form and Petitioner responded that they had; the trial court asked Petitioner if he understood the form and Petitioner responded that he did; the trial court asked Petitioner if he had any questions about the form and Petitioner responded that he did not; and the trial court asked Petitioner if he had supplied to trial counsel the answers to each of the questions on the plea form and Petitioner replied that he had.

Based on the ruling in *Cooper*, it is clear that the record as a whole shows that Petitioner was advised of and understood the rights that he was waiving by pleading guilty.

Accordingly, Ground One provides no basis for relief.

GROUND TWO

In Ground Two, Petitioner alleges that the trial court incorrectly informed Petitioner as to the sentences that Petitioner could receive on the three convictions of possession of a firearm during the commission of a crime and that the trial court did not give Petitioner an opportunity to withdraw his guilty plea upon learning that an incorrect statement as to the sentences had been given.

Findings of Fact

The plea form indicates that the possible sentence for possession of a firearm during the commission of a crime was one year to five years. (Habeas Hearing Transcript June 30, 2006, p. 108). At the May 4, 2000, plea hearing, the trial court stated that the

range of sentences was one year to five years. (Habeas Hearing Transcript June 30, 2006, p. 14). At the June 22, 2000, sentencing hearing, while imposing sentence on Petitioner's co-defendant, the trial court asked the prosecutor if the range of sentences on possession of a firearm during the commission of a crime was one to five. (Habeas Hearing Transcript June 30, 2006, p. 38). The prosecutor stated that the charge carried a sentence of five years and that it had to be consecutive. (Habeas Hearing Transcript June 30, 2006, p. 38). Later, when imposing sentence on Petitioner, the trial court stated that the possession of a firearm during the commission of a crime charges carried five years each to be run consecutive to each other and to the other sentences. (Habeas Hearing Transcript June 30, 2006, p. 42). After imposing sentence on Petitioner, the trial court asked if there was anything else in Petitioner's case; trial counsel replied that there was not. (Habeas Hearing Transcript June 30, 2006, p. 43).

During his deposition, trial counsel testified that Petitioner never expressed to him any trepidation or concern about entering his guilty pleas. (Habeas Hearing Transcript August 4, 2008, p. 23). Trial counsel also testified that Petitioner never said, during either the plea hearing or the sentencing hearing, that he did not understand something or that he had changed his mind. (Habeas Hearing Transcript August 4, 2008, p. 27). He further testified that Petitioner never asked him at any time about wanting to withdraw his guilty plea for any reason and that Petitioner never contacted him to say that he was unhappy about pleading guilty after being sentenced. (Habeas Hearing Transcript August 4, 2008, p. 27).

Conclusions of Law

As noted above, Petitioner was on notice during the sentencing hearing, based on the sentencing of his co-defendant, that the sentence for possession of a firearm during the commission of a crime was a mandatory five years that had to be consecutive to the other counts of possession of a firearm during the commission of a crime and to the sentences for the other charges, as opposed to carrying a range of one to five years. But, as trial counsel testified, Petitioner never indicated to him that he was unsure about entering his plea, never said that he did not understand something or that he had changed his mind, and never asked about withdrawing his guilty plea. Additionally, the trial court specifically asked if there was anything more Petitioner wanted to cover and trial counsel stated that there was not.

At any time before judgment is pronounced, a defendant can withdraw a plea of guilty. O.C.G.A. § 17-7-93(b). Judgment is "pronounced" at the time of the signing of the sentence by the trial judge. *Farmer v. State*, 128 Ga. App. 416 (1973). In a case involving a plea with no recommendation about the sentence such as this one,[5] once the sentence was orally pronounced, Petitioner's statutory right to withdraw the plea disappeared. *Bice v. State*, 212 Ga. App. 184 (1); *Brassfield v. State*, 242 Ga. App. 747 (2000). Petitioner had ample opportunity to make known any uncertainty he had about the plea or the sentences before the trial court orally pronounced his sentence; the record shows that he never raised any such concerns to trial counsel.

[5] Habeas Hearing Transcript August 4, 2008, p. 18.

Petitioner testified at the June 30, 2006, evidentiary hearing that he did not have a clue that the sentences on possession of a firearm during the commission of a crime were a mandatory five years and were required to be consecutive. Petitioner also testified that he never would have pled guilty had he known the consequences of what the trial court could do. (Habeas Hearing Transcript June 30, 2006, pp. 6-7). However, the transcript of the sentencing hearing shows that, prior to the oral pronouncement of Petitioner's sentence, the correct sentence for possession of a firearm during the commission of a crime was stated on the record by the trial court. Petitioner had an unfettered opportunity at this point to withdraw his guilty plea and chose not to. "The representations of the defendant [at a plea bearing] . . . constitute a formidable barrier in any subsequent collateral proceedings." *Blackledge v. Allison*, 431 U.S. 63 (1977), In this case, Petitioner, despite foregoing the opportunity to ask to withdraw his guilty plea when he had an unfettered right to do so, now puts forth the position that he had no idea about the mandatory sentencing provisions of possession of a firearm during the commission of a crime and would not have pled guilty had he been aware. Petitioner's failure to seek a withdrawal of his guilty plea thus precludes him from advancing this argument at this stage.

Accordingly, Ground Two provides no basis for relief.

GROUND THREE

In Ground Three, Petitioner alleges that he received ineffective assistance of counsel at the trial level because trial counsel failed to adequately

explain Petitioner's constitutional rights that he was waiving by pleading guilty, incorrectly advised Petitioner of the minimum and maximum sentences that he could receive, made no effort prior to the entry of the guilty plea to correct the trial court after it incorrectly stated possible sentences that Petitioner could receive, and failed to advise Petitioner regarding withdrawing his guilty plea.

Findings of Fact

Petitioner was represented at the trial level by Charles Gammons Wright, Jr. (Habeas Hearing Transcript August 4, 2008, pp. 7, 9). Trial counsel was admitted to the State Bar of Georgia in 1986. (Habeas Hearing Transcript August 4, 2008, p. 8). Since being admitted to the State Bar of Georgia, trial counsel has maintained a general practice, of which approximately 35 percent is criminal defense. (Habeas Hearing Transcript August 4, 2008, p. 8).

Trial counsel testified at his deposition that he would have reviewed the plea form and signed it with Petitioner before appearing before the judge to enter the guilty pleas. (Habeas Hearing Transcript August 4, 2008, p. 22). He testified that the form reflects that he advised Petitioner of the sentence ranges for the charges against him. (Habeas Hearing Transcript August 4, 2008, pp. 22-23). He testified that if he signed the plea form that stated that he had explained the rights being waived to Petitioner, that he did explain the rights and sentences to Petitioner. (Habeas Hearing Transcript August 4, 2008, p. 23). He testified that he did not think there was "any doubt" that Petitioner understood what he explained to him. (Habeas Hearing Transcript August 4, 2008,

p. 23). He also testified that his usual practice with a plea form was to fill out the information he was required to complete, then present the form to the defendant for the defendant to read, unless the defendant was illiterate, in which case he would read it to the defendant. (Habeas Hearing Transcript August 4, 2008, p. 25). Trial counsel testified that he could not specifically remember if Petitioner read the form in his presence, but did not believe he had any doubt that Petitioner did so. (Habeas Hearing Transcript August 4, 2008, p. 25). He testified that when he gives a defendant a plea form to read, he tells the defendant that if he has any questions about the form, they will discuss it. (Habeas Hearing Transcript August 4, 2008, p. 35), He also testified that his standard practice at the time Petitioner entered his plea with regard to defendants reading the plea form for themselves was that he would tell the defendants that they had to read the form word-for-word, that they had to understand the form, and that if they did not understand something, they had to talk to him about it. (Habeas Hearing Transcript August 4, 2008, p. 49). Trial counsel testified that it was his practice to, unless the defendant was illiterate, have the defendants read the plea form for themselves as opposed to just taking his word for what the plea form says, in which case it becomes like he is the one pleading guilty and not the defendant. (Habeas Heating Transcript August 4, 2008, p. 43).

Trial counsel testified that he was confident that Petitioner understood that 27 of the 35 counts against him would be nolle prossed, but that the trial court would he able to impose whatever sentence it saw fit on the remaining eight charges.

(Habeas Hearing Transcript August 4, 2008, pp. 25-26). He also testified that he had no reason to believe that Petitioner did not fully understand and accept the agreement. (Habeas Heating Transcript August 4, 2008, p. 26). He testified that he remembered personally reviewing every charge with Petitioner. (Habeas Hearing Transcript August 4, 2008, p. 33).

Conclusions of Law

The test for establishing ineffective assistance of counsel was set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under this two-prong test, Petitioner must show that: 1) the attorney's performance was deficient, meaning that counsel made errors so serious that he was not functioning as "counsel" guaranteed by the Sixth Amendment, *Strickland* at 687; and 2) that this deficient performance prejudiced the defense, that is, counsel's errors were so serious as to deprive Petitioner of a fair trial with a reliable result. *Id.* at 694. This test has been held to apply in guilty plea cases. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985).

With regards to Petitioner's claim that trial counsel was ineffective because he failed to adequately explain Petitioner's constitutional rights that he was waiving by pleading guilty, the record shows that trial counsel presented the plea form to Petitioner and asked him to read it over and then raise any questions he might have. Trial counsel also stated that he had no reason to believe that Petitioner did not fully understand and accept the agreement. The answers Petitioner gave on the plea form show that he understood the rights he had and that he was

waiving them by pleading guilty. Petitioner now claims, through the testimony he gave at the first evidentiary hearing in this matter, that no one reviewed the constitutional rights he was waiving with him. (Habeas Hearing Transcript June 30, 2006, p. 4). However, Petitioner's own written statement at the time he entered his plea shows that he understood those rights and that he was waiving them by pleading guilty. As noted above, the "representations of a defendant [at a plea hearing] . . . constitute a formidable barrier in any subsequent plea proceedings." *Blackledge*. Even if trial counsel's alleged failure to adequately explain Petitioner's constitutional rights that he was waiving by pleading guilty constituted deficient performance, Petitioner has failed to show that he was prejudiced, as the record clearly shows that Petitioner understood that he had these rights and that he was waiving them by pleading guilty.

With regard to Petitioner's claim that trial counsel was ineffective for incorrectly advising Petitioner of the minimum and maximum sentences he could receive, the record shows that, at the sentencing hearing, any inaccuracies that may have existed in previous statements regarding sentences were cleared up on the record prior to the trial court orally imposing sentence on Petitioner. The record also shows that the trial court asked Petitioner if there was anything else that needed to be considered in his case, and trial counsel stated that there was not. Trial counsel also testified at his deposition that Petitioner never expressed any trepidation or concern about pleading guilty and never asked about the possibility of withdrawing his guilty plea. Even if trial counsel provided erroneous advice

regarding possible sentences, the record shows that the trial court cleared up any inaccuracies that may have existed. Accordingly, Petitioner has failed to prove that he was prejudiced by this alleged deficiency. *Rios v. State*, 281 Ga. 181, 182 (2006). Likewise, Petitioner's argument that trial counsel was ineffective for failing to correct the trial court after it incorrectly stated possible sentences that could be imposed fails; even if trial counsel performed deficiently in this regard, Petitioner has not shown that he was prejudiced, as the trial court was properly informed of the possible sentences by the prosecutor and the correct sentences were stated on the record.

With regard to Petitioner's claim that trial counsel was ineffective for failing to advise him regarding withdrawing his guilty plea, the record is clear that Petitioner never expressed to trial counsel any desire to withdraw his guilty plea. There is also no evidence that Petitioner was coerced or pressured into pleading guilty. Under these circumstances, there was no right to withdraw his plea of which Petitioner should have been made aware. Accordingly, Petitioner has failed to show that trial counsel's performance was deficient in this regard. *Floyd v. State*, 293 Ga. App. 235, 236 (2008).

Accordingly, Ground Three provides no basis for relief.

GROUND FOUR

In Ground Four, Petitioner alleges that his guilty plea was not knowingly, voluntarily, and intelligently made; that the trial court failed to comply with Uniform Superior Court Rule 33.8; that the trial court

made little or no effort to determine if the plea was knowingly, voluntarily, and intelligently made; that the plea form on which the trial court relied failed to establish that Petitioner's plea was entered knowingly, voluntarily, and intelligently; that Petitioner was not fully informed as to the minimum and maximum sentences that he could receive on the counts, to which he pled guilty; and that Petitioner's plea was obtained in violation of Petitioner's due process rights because it was not entered knowingly, voluntarily, and intelligently.

Findings of Fact and Conclusions of Law

As stated above, alleged violations of Uniform Superior Court Rule 33.8 for accepting guilty pleas do not state bases for relief in habeas corpus, as the Uniform Superior Court Rules are not of constitutional dimension, and O.C.G.A. § 9-14-42(a) is limited to review of a violation of a federal or state constitutional right. *Britt v. Smith*, 274 Ga. 611 (2001).

That being said, when examined in the framework of the decision in *Cooper*, the record is clear that Respondent, has met its burden of showing that Petitioner's plea was entered knowingly, voluntarily, and intelligently. Petitioner stated on his plea form that be understood that he would be entitled to the *Boykin* rights should he plead not guilty, that no one had threatened or coerced him into pleading guilty, and that he understood that by pleading guilty he was waiving his constitutional rights. During the plea hearing, Petitioner stated that he had signed his plea form, that he had gone over the form with trial counsel, that he understood the form, that he did not have any questions about the plea form, and that

he had supplied to trial counsel the answers to each of the questions on the plea form. Under similar factual circumstances, the Supreme Court of Georgia in *Cooper* stated that "the evidence demanded a finding that Cooper's guilty pleas were freely and voluntarily entered." *Cooper* at 67. Therefore, in this case, contrary to Petitioner's allegations, the trial court made sufficient effort to determine if the plea was knowingly, voluntarily, and intelligently made. Further, the plea form relied on by the trial court, when considered in tandem with Petitioner's statements on the record at the plea hearing, did establish this. At the May 4, 2000, plea hearing, the trial court asked Petitioner if his pleas were freely and voluntarily tendered; Petitioner replied that they were. (Habeas Hearing Transcript June 30, 2006, p. 16). The court later made an express finding that the pleas of Petitioner and his co-defendant were freely and voluntarily tendered. (Habeas Hearing Transcript June 30, 2006, p. 19).

With regard to Petitioner's allegation that he was not fully informed as to the minimum and maximum sentences that he could receive on the counts to which he pled guilty, as noted above, even if there had been inaccuracies in what Petitioner was told regarding sentences, those inaccuracies were cleared up on the record prior to the oral imposition of sentence. The transcript of the May 4, 2000, plea hearing shows a discussion of ranges of sentences with Petitioner's co-defendant. (Habeas Hearing Transcript June 30, 2006, pp. 13-14). A short time later, the trial court asked Petitioner if he had heard the prior review of possible punishments; Petitioner replied that he had. (Habeas Hearing Transcript June 30, 2006, p. 15). Any inaccuracies there might

have been were cleared up later, as the record shows. Petitioner himself even testified that inaccuracies regarding the sentences were "straightened out in court." (Habeas Hearing Transcript June 30, 2006, p. 8).

Accordingly, Ground Four provides no basis for relief.

CONCLUSION

WHEREFORE, the instant petition for Writ of Habeas Corpus is DENIED.

If Petitioner desires to appeal this Order, Petitioner must file a written application for certificate of probable cause to appeal with the Clerk of the Supreme Court of Georgia within thirty (30) days from the date of filing of this Order. Petitioner must also file a Notice of Appeal with the Clerk of the Superior Court of Telfair County within the same thirty (30) day period.

The Clerk of the Superior Court of Telfair County is hereby DIRECTED to mail a copy of this Order to Petitioner, Respondent, and the Office of the Attorney General.

SO ORDERED this 29th day of December, 2008.

/s/ PHILLIP R. WEST
PHILLIP R. WEST, Chief Judge
Oconee Judicial Circuit

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